

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)		CC Docket No. 92-90

**REPLY COMMENTS OF THE OFFICE OF THE PEOPLE’S COUNSEL
FOR THE DISTRICT OF COLUMBIA**

I. INTRODUCTION

Pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“Notice”) and Memorandum Opinion and Order,¹ the Office of the People’s Counsel for the District of Columbia (“OPC-DC”) submits these reply comments on the Commission’s proposed amendments to its rules implementing the Telephone Consumer Protection Act of 1991 (“TCPA”). OPC-DC opposes federal preemption of state-enacted legislation protecting consumers from unwanted telemarketing calls. OPC-DC reiterates its position that the establishment of a single national database should complement state-enacted do-not-call legislation that affords consumers greater protections than under federal law.

II. SUMMARY OF OPC-DC’S POSITION

Succinctly stated, OPC-DC submits adoption of a national do-not-call database that complements state-enacted do-not-call regulations will protect consumers from unwanted telemarketing calls originating from within and outside of their respective state.

¹ In re Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Notice of Proposed Rulemaking and Memorandum Opinion and Order (TCPA Order), 17 FCC Rcd 17459, CG Docket

III. DISCUSSION

In this Notice, the FCC requests comments on the Commission's proposed amendments to rules implementing the TCPA. In initial comments, parties disagree over whether state-administered do-not-call databases should exist in tandem with a federal national do-not-call database. Parties supporting the retention of both federal and state databases argue that state-enacted telemarketing regulations will afford consumers greater protections against telemarketers than federally adopted rules.²

Parties opposing state do-not-call lists argue that Congress required federal preemption of state do-not-call regulations and intended that there be only one do-not-call database.³ Other parties argue that state do-not-call lists are unnecessary and a duplication of federal regulations and, therefore a national do-not-call list should supercede and absorb state lists.⁴ OPC-DC submits telemarketing calls are not wholly interstate in nature and, therefore, state and local governments should continue to have the right to protect consumers from unwanted business communications that originate or terminate within the border of their respective state.

IV. ARGUMENT

A. Establishment of a National Do-Not-Call Database Does Not Require Federal Preemption of State Do-Not-Call Regulations.

² Comments of the National Association of State Utility Consumer Advocates, at 14.

³ Comments of Verizon, at 9.

⁴ Comments of AT&T Wireless Services Inc., at 13.

OPC-DC submits that Congress specifically preserved a state's right to enact state regulations that compliments a single national database created by the FCC or the Federal Trade Commission (FTC). In the TCPA, Congress expressly stated that state law was not preempted.⁵ In preserving a state's right to establish state do-not-call databases that complement a federal single national database, Congress explicitly stated "...nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations"⁶ At a minimum, this language indicates that state laws must be consistent with federal regulations and definitions established by the FCC or the FTC. State do-not-call laws enacted prior to the FCC establishing a national database can be modified to be consistent with terms and conditions set by the federal agencies. Moreover, Congress intended states to enact local legislation that incorporates the use of a single national database. Specifically, the statute provides:

"If, pursuant to subsection (c)(3), the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that *does not include the part of such single national database* that relates to such State."⁷

Reading sections 227(e)(1) and 227 (e)(2) jointly Congress clearly did not intend for states to be preempted as a result of the FCC establishing a national do-not-call database. While the statute does not expressly require states to establish a do-not-call database, it does not prohibit states from establishing do-not-call lists that complement the FCC and FTC's national database and telemarketing regulations. State commissions have the expertise to establish specific regulations that are tailored to consumer privacy needs without infringing upon the development

⁵ 47 U.S.C. § 227 (e)(1) (2002).

⁶ Id.

⁷ 47 U.S.C. § 227(e)(2) (emphasis added).

of commerce within its borders. Accordingly, OPC-DC supports state do-not-call regulations that complement a federal national database.

B. The Commission Should Modify its Time of Day Restrictions.

OPC-DC submits that the FCC's current time of day restrictions are insufficient to protect consumers' right of privacy in the late evening hours and on weekends. The existing rules prohibit unsolicited sales calls before 8:00 a.m. and after 9:00 p.m. local time at the called party's location. Consumers often reserve Sundays for religious practices and spending time with family and should not be disturbed by a company's attempt to generate business sales on a Sunday. OPC-DC recommends the Commission consider extending its restrictions to prohibit telemarketers from making unsolicited calls after 8:00 p.m. on weekdays and from placing unsolicited calls on Sundays. OPC-DC's recommendation is not unduly restrictive as it does not interfere with businesses placing telemarketing calls during the week and on Saturdays.

V. CONCLUSION

For the foregoing reasons, the OPC-DC respectfully requests the Federal Communications Commission establish a national database that does not preempt state-enacted do-not-call regulations.

Respectfully Submitted,

Elizabeth A. Noël

Elizabeth A. Noël, Esq.
People's Counsel

Sandra Mattavous-Frye
Deputy People's Counsel

Barbara L. Burton
Brenda K. Pennington
Joy M. Ragsdale
Laurence Daniels
Assistant People's Counsels

Office of the People's Counsel of the
District of Columbia
1133 Fifteenth Street, N.W., Suite 500
Washington, D.C. 20005
(202)727-3071

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